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10/765,228

01/27/2004

Jeffrey Arthur Nelson

16663-US

1766

7590

08/26/2005

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EXAMINER

TORRES, ALICIA M

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/765,228

Applicant(s)

NELSON ET AL.

Examiner

Alicia M. Torres

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Deiss 2,732,941.

3. Regarding claims 1-4, Deiss discloses a spreader for a movable cleaning shoe (19). The spreader comprises a panel having an inner edge (42) and an outer edge (41). The inner edge (42) has a mounting assembly, and the outer edge (41) inherently has a weight. The panels (41) have an inherent flexibility and resilience due to the nature of the material from which they are constructed, as per claim 1; and

Wherein the cleaning shoe (19) reciprocates and shakes, as per claims 2 and 3; and

The panels (41) extend downstream at an acute angle, as per claim 4.

4. Regarding claims 5-8, 15, Deiss discloses a cleaning shoe for an agricultural harvesting machine. The cleaning shoe has a movable reciprocating frame (19) with sidewalls (20) and a sieve (17) supported on the frame. The spreaders have panels having an inner edge (42) having a mounting assembly, and the outer edge (41) inherently has a weight. The spreaders (41) are flexible and resilient and are mounted to and extend from the sidewalls (20). The spreaders (41)

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resiliently move back and forth and can do so during movement of the frame, as per claims 5 and 15, 17, 20; and

The panels extend downstream at an acute angle between 30 and 60 degrees (see Fig. 2), as per claims 6-8, 16, 18; and

Wherein the sieve is a chaffer sieve, as per claim 21.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deiss in view of Hagerer et al. 4,875,889, as cited by the applicant.

The device is disclosed as applied above. However, Deiss fails to disclose the sieve having longitudinally extending dividers located between and parallel to the sidewalls.

Hagerer teaches that it is known in the art to provide a sieve with longitudinally extending dividers (34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sieve of Deiss with the longitudinally extending dividers as taught by Hagerer in order to further prevent lateral movement of crop material when the harvesting machine is operating on a slope.

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7. Claims 9, 13, 14, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deiss in view of Hagerer and Balthes 3,731,475.

The device is disclosed as applied above. However, Deiss and Hagerer fail to disclose wherein the panels are rubber. Balthes discloses a similar device wherein the panels (44) are made of rubber.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the rubber panels of Balthes on the device of Deiss and Hagerer in order to provide flexibility.

#### *Response to Arguments*

8. The amendments made are insufficient to overcome the prior art of reference. The panels of Deiss are made of sheet metal and will move in a resilient and flexible manner.

#### *Conclusion*

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

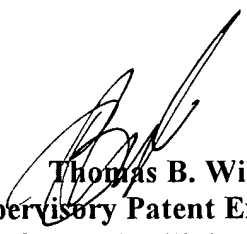
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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 571-272-6997. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 571-272-6998.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 571-273-8300.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group Art Unit 3671**

AMT  
August 22, 2005